

**COMMERCIAL LAW**  
**MODEL EXAM**  
**2011**



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## ***IRAC method of completing exams***

- Issues** - Outline the issues that you are going to discuss.
- Rules** - Define the legal rules that are relevant to the question.
- Application** - Apply the legal rules to the facts of the question (this is the hard part!).
- Conclusion** - Tie things up, usually in the form of an advice to your hypothetical client.

Always use your reading time wisely to **PLAN YOUR ANSWER** before writing. This is of utmost importance as it will help you clarify your thoughts and ensure that you avoid following desperate exam strategies that unprepared students commonly resort to, such as:

- i) 'the kitchen sink' i.e. spilling all of your knowledge that is vaguely related to the topic onto the exam paper and hoping for the best.
- ii) 'the garden path' i.e. going off on an irrelevant tangent

Remember that the **APPLICATION IS THE MOST IMPORTANT SECTION** of your answer and should take up the bulk of your time. The actual conclusions you reach are often superfluous. Rather, your marker will be most interested in *how you arrived* at your conclusion.

Here is a distinction-level model answer for a Commercial Law problem. Commercial Law is an elective subject typically taught in the fourth or fifth year of a law degree. This exam answer is an excellent example of the IRAC method, an exam technique which is espoused by law lecturers around the country. Try to answer the question yourself first before looking at the answer. Don't worry if you didn't come up with the same amount of text as is in the answer below. The student who wrote this answer had a considerable amount of time in which to write. Good luck!

You are Jason's solicitor. He has accepted your firm's costs agreement. Advise him as to the matters set out below.

**QUESTION (1)**

Late last year Jason lost his job working in the University Law School photocopy room, and on his way home purchased a lottery ticket. He won big and bought a business, called *Sunil's Shiny Diamond Cutting Works*. Jason places an order with Sunil's cousin in Calcutta, Srika, to buy 3 newest model diamond cutting machines at a price "Delivered Duty Paid" of \$150,000 per machine. (Sunil only has one machine.) These cutting machines can only be purchased in India. Each new machine is to be delivered at Darling Harbour, Sydney, at the end of each month commencing January 2010. The *Srika Machines Ltd* purchase order form that Jason signs says in relevant part:

*"12. Srika Machines Ltd reserves ownership of all machines against the buyer and any sub-buyer or disponee of any interest in the machines, until the buyer has paid Srika Machines Ltd all amounts outstanding under all sale of goods contracts between Srika Machines Ltd and the buyer.*

*13. Time is of the essence for payment.*

*14. Delivery must occur within 30 days of scheduled delivery dates."*

After delivering in January, Srika tells Jason that he will deliver no more machines. Srika says that because India has cut off diplomatic relations with Australia because of the violence against Indian students in Melbourne, as of 5 February 2010 he has been ordered by the Indian Government to deliver all goods destined for Australia to Mumbai instead.

Jason does not want to pay for any of the machines at all. He tells you he has decided to keep using Sunil's old diamond cutting machine instead.....

**QUESTION (2)**

Jason has also kept up his love of vintage cars. He has always had a little-business-on-the-side because his job at the Law School was very boring.

His little business on the side is finding private buyers for people who want to sell vintage motor vehicles. He charges his vendor clients a 10% commission on successful sales.

In November of last year Lady LaLa came to Jason and told him she wanted to sell her 1921 model Bentley. Jason took some photographs of the car in her driveway, with her standing, smiling, beside it. Lady LaLa agreed that Jason could accept any offer of \$20,000 or more on her behalf.

In December, D. Piddy (the hip-hop artist) asked Jason to sell an old Aston Martin (for no less than \$50,000), and an old Harley Davidson motorcycle (for no less than \$10,000) for him. He left the Aston Martin and the Harley Davidson at Jason's garage. D. Piddy instructed Jason that he would keep the Aston Martin's registration papers until he has received his money. He insisted that Jason not tell anyone that the Aston Martin was D. Piddy's Aston Martin. D. Piddy also required that any payment must be by deposit to his numbered Swiss bank account.....

**QUESTION (3)(a)**

Having sorted out his troublesome legal problems, Jason goes into the wine trade. Jason goes to the Hunter Valley and deals with a Giovanni, an expert in Italian wine. He orders from him a new variant of Chianti wine called Chianti Nuevo, never before sold in Australia, (so Giovanni says). Chianti wine for centuries has been known as a white wine. He orders 100 cases of 1996 vintage Chianti Nuevo. He presells them at a handsome profit to various wine shops in rural NSW.....

**QUESTION (3)(b)**

Bumco manufactures commode chairs. Joy, the matron of 'Very Nice Nursing Home' heard about the chairs and telephoned Hymie, the general manager of Bumco. She asked him whether commode pots could be used with the Bumco chair. Hymie said yes, and sent her a brochure. The brochure listed a number of features of the commode chair. Immediately above the warranty: "*All commode bases will accept commode pot or bed pan*" appeared another warranty: "*All commode bases are easy to remove for cleaning*". Joy ordered one chair.....

**QUESTION 3(c)**

Sam owns a ship called 'Santa'. Sam entered into a contract to sell the ship to the ship's master, Captain Jack, who paid \$100,000 as a deposit and agreed to pay the balance of the price \$400,000 upon completion. Sam agreed to lend Captain Jack the \$400,000, but they never signed a loan agreement. Captain Jack instead went to CBSH Bank, which offered to lend him the \$400,000 as long as CBSH Bank got good title to the 'Santa' subject to an obligation to reconvey that title upon repayment in full. Captain Jack forged a tax invoice which purported to be on Sam's letterhead, and gave it to CBSH Bank.....

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